SUBSEQUENT PAYMENTS UNDER RESULTING TRUSTS.

SINCE the text-books are not very full upon what are known as "subsequent payments" under resulting trusts, and since the Courts sometimes speak ambiguously about them, it is of use to notice certain cases whose value is increased by the fact that there are comparatively few of the kind. Subsequent payments usually fall under that class of resulting trusts in which the consideration is paid by one, and the land is granted to another. The peculiar rule is that the trust must result at the time of the grant; that it is implied by law from the acts of the parties; that the intention of the parties to create a trust is not defeated by their oral expression of it; and that payments and agreements before or after the grant cannot of themselves raise a resulting trust. When, for instance, payments subsequent to a grant are held to show such a trust they are merely parts of a transaction which as a whole is held to prove that at the time of the grant a trust was raised.

This distinction between proving the trust, and creating it, is often overlooked, and is important in the cases *where notes are given for the land by one party for the benefit of another, and the payments in money are made subsequently* by that other. The fact that a note is paid by one who is not a party to it tends to convince the Court that the nature of the transaction, at the time of the grant when the note was given, was as follows: First, the note was in fact lent by the maker to the person who now pays it, although it was not delivered to him; second, the note, being so lent to him, was, therefore, held in trust for him by the maker before it was delivered to the grantor for the land; third, the note so held in trust was delivered to the grantor for the land, which being so purchased was affected by the same trust that affected the note; fourth, thus the trust in the land was then raised in behalf of the person who now pays the note, whether the parties orally expressed or can be supposed to have thought of this legal analysis or not, and even if they used words inconsistent with this explanation of their conduct. But the Courts sometimes speak as if these payments raised the trust, when, strictly speaking, they are the conditions upon the performance of which the transaction as

a whole is completed, so that the Courts will enforce the trust which was raised by the notes loaned to serve as a consideration for the grant. Even if the payments had not been made the Courts might hold that a trust had resulted, although they might not enforce it unless the plaintiff should make the payments. In Runnels *v.* Jackson [1] no payment had been made, and a contract for payment from a certain crop had been broken by the complainant, although a subsequent tender of the money was made by him.

The length to which a Court will go in inferring that a trust results from acts which can mean nothing but a loan is illustrated by that case of Runnels *v.* Jackson,[1] in which the person who took the grant of the land expressly refused at the time to lend the money to the person for whose benefit he actually took the land and paid the money. Yet the Court held that there was a loan and that a trust resulted.

And the same tendency is peculiarly shown by White *v.* Sheldon,[2] where a trust was held to result in favor of an attorney who had rendered, was rendering, and continued to render services, before, at, and after the time of the grant of mining land to another who furnished the money for the purpose. Neither of these cases contains the element of notes, but in Runnels *v.* Jackson the person who was held to be a *cestui que trust* had not paid anything, and the decree in his favor required him to pay what was held to have been a loan when the trust resulted. In White *v.* Sheldon the Court speaks of the services of the plaintiff as a part of the consideration, and says, "Equity looks to the consideration, and creates a trust in favor of him who furnishes it, regardless of whether such consideration be money, or labor, or property given in exchange." But in view of the principle of resulting trusts that the land is affected by the same trusts, if any, which affected the money,[3] and since money was actually spent by the defendant in White *v.* Sheldon to complete the transaction, which was somewhat complicated, it seems to be clearer to regard the money as in part a loan to the *cestui que trust* in anticipation of the services by which he was to pay for it. Thus the services which followed the grant resemble the subsequent payment of a note by a *cestui que trust.* Then if the Court had said *enforces* instead of "creates," it would seem to be more correct in describing the effect of the

[1] 1 How. (Miss.) 358 (1836). [2] 4 Nev. 280 (1868).
[3] Gibson *v.* Foote, 40 Miss. 788 (1886).

services of the complainant in White *v.* Sheldon, for the trust results at the time of the grant. Strictly speaking, equity "creates" or raises the trust at the time of the grant, then the Court will enforce the trust so created or raised after the *cestui que trust* has made his payment. It is true that the transaction is treated as one; but this is not a reason for confusing the acts, the actual diversity of which is the very occasion for the exercise of the Court's authority. The value of treating the transaction as one does not fully appear without this analysis.

The cases concerning notes which have been alluded to are stated below. It is unnecessary here to take the distinction between the cases where notes are themselves payment, and where they are not, for in either event the views here suggested are applicable. Whether a note be strictly payment, or not, it may be loaned and may be given as the consideration of a grant.

In Dudley *v.* Bachelder[1] the Court overruled a demurrer to a bill alleging an agreement by which money *and notes* were advanced as a loan to the complainant in the purchase of property taken in the name of the lender but for his benefit, and put the correct rule as follows: "If, then, the purchase-money paid and the notes given for the lands conveyed to P were the money and notes of P, loaned to this complainant, he having at the time given his notes therefor, or having by some valid contract agreed to repay the money advanced and interest, and to take up the notes thus given at their maturity, and take a deed of the land, then there would arise a resulting trust in his favor. Whether the evidence will establish such a trust is a matter to be determined upon the hearing of the cause."

In Cramer *v.* Hoose[2] one paid a third of the purchase-money for land, and his father who attended to the matter for him gave his own notes for the balance. Afterwards the father paid his own notes so given, but the payments were made in pursuance of a contract with the son by which the son was entitled to have such payments made for his benefit. It was held that a trust resulted in favor of the son. Thus the notes were treated, like the original purchase-money in Runnels *v.* Jackson, as loans to the son, and the payments on the notes were equivalent to payments of the loans. The Court said, "Being paid in pursuance of such a contract, such payments have the same legal effect as if the money had been paid to (the son) by his father, and he had paid it to the holders of the notes."

[1] 53 Maine, 403 (1866). [2] 93 Ill. 503 (1879).

In Lounsbury *v.* Purdy,[1] the plaintiff paid part of the purchase-money, and the defendant and another gave their note for the balance. The third party took the title in his own name. The agreement was that he should hold it in trust for the plaintiff, who afterwards paid the note. The Court discusses the facts, and treats the money and note as together the consideration which raised the trust in the whole land at the time of the purchase. Thus the note of the defendant and another is held to have been loaned to the plaintiff, and hence to have been held in trust before delivery for the plaintiff. Hence the resulting trust was sustained against creditors of the person who had taken the legal title.

And in this case the Court laid down the same reasonable rule as follows: "In this case there can be no doubt that whilst the grant was made to one person, the consideration therefor was paid by another. The defendant objects that but a part of the purchase-money was paid when the deed was executed, and that if there could have been a resulting trust in favor of the plaintiff it would have been only *pro tanto.* But *a note* was given for the residue at the same time, in her behalf, by her then friends, and it is apparent that it was the understanding at the time when the conveyance was made. It is not necessary that the consideration should be paid in specie, but anything representing it, coming from or in behalf of the *cestui que trust,* will be equally available to protect the beneficial interest. The cases which declare the unavailability of subsequent payments have reference to such as are made pursuant to arrangements concocted after the conveyance had been made and consummated.

In Barrows *v.* Bohan,[2] a woman made a parol contract for the purchase of land, and at different times paid parts of the purchase-money. Her brother then agreed to go halves with her in payments and ownership. Accordingly he made certain payments and gave his note for a balance of the purchase-money. The land was conveyed to him. Afterwards he and his sister paid his note. They also built upon the land, each furnishing money. It was held that a trust resulted in her favor for half. The Court took as the test facts the payments by the sister, and her actual liability for a part of what was paid by her brother. One of these facts consisted in the intention of the parties as distinguished from their

[1] 16 Barb. 376 (1853), and for the facts, 11 Barb. 490 (1851).

[2] 41 Conn. 278 (1874).

oral agreement, and since the Court found the intention of a trust as a fact, it held that the parol agreement for the trust did not defeat the trust which the law inferred from the facts. The whole transaction was treated as one in order to ascertain the fact of intention. This was finally determined by treating the brother's note as a loan to the sister for whose benefit it was given. For the Court says: "Whether she is entitled to one-half the property or not depends upon the view we take of the mortgage debt of $265 (the amount of the note). If that is to be regarded solely as the debt of the respondent (brother), and the petitioner (sister) as not then responsible for any part of it, either to the respondent or the grantors, then she had no title in respect to that portion of the purchase-money. But if it is to be regarded as her debt in part, she being either jointly liable, as between themselves, with the respondent, or liable to the respondent for one-half the amount, then her title to one-half of the property is complete."

In Morey *v.* Herrick,[1] two men agreed to go halves in payment and ownership, and one took the land in his own name. For the land was given a note, signed by one of them, and by a third party, who signed with him at their request. The one whose name did not appear paid his half on the note. Although a question of notice affected the title the Court (at the request of the parties and with reference to possible future litigation in the matter) expressed its opinion that a trust had resulted in his favor, and said: "What difference can it make that eventual payment was secured by a promissory note, made, in part, at least, on (his) credit and at his request? None whatever. It cannot be doubted that he was bound to the surety he procured, to discharge it when due, and it is proved that he did so. He is, therefore, to be regarded as though he had been actually a party to the note, and the subsequent payment of at least a moiety of it is reflected back to the inception of the purchase."

This seems to be an unnecessary reason,—to say that the payment of money is "reflected back;" for it is simpler to regard the giving of a note under such circumstances as a loan of the note to the person who does not sign it, but for whose benefit it is given. Then the payment being held to be a part of one whole transaction we get rid of a vague word, and have a clearer view of the act of creating and the occasion for enforcing the trust. This is

[1] 18 Pa. St. 123 (1851).

the express doctrine of Dudley *v.* Bachelder, and the meaning of Lounsbury *v.* Purdy, and Barrows *v.* Bohan, and Cramer *v.* Hoose. But even in Dudley *v.* Bachelder the Court used the following words: "The payment which *raises* a resulting trust must be part of the transaction, and *relate* to the time when the purchase was made" (p. 407). (The italics are mine.) Since the transaction is held to be one, the word "raises," as applied to the effect of the payment, does not imply that the trust was not raised by the loan of the notes, but rather has in view the enforcing of the trust, as I have above suggested concerning White *v.* Sheldon. The word "relate," in Dudley *v.* Bachelder, simply indicates the unity of the transaction, which in fact consisted of both the loan and the payment of the loan. The trust cannot be said not to have existed between the loan and the payment of the loan, for, although the transaction is held to be one, time in fact intervened, and within such time the land was, as in Runnels *v.* Jackson, subject to the equity which was completed, for the purpose of being enforced, by the act of payment.

Practically also it is important to insist upon the distinction between the creation of the trust by the loan of a note, and the evidence or want of evidence of the trust, consisting in the payment of the note; for when the note has not been paid, the maker of it, if fraudulently inclined, sometimes takes advantage of that to deny that any trust exists. This he may do, either for his own benefit as against the person for whose benefit he originally agreed to act, or to protect that person against creditors by denying their debtor's interest in the property in question. Sometimes a shrewd speculator, who induces a tool of no pecuniary responsibility to sign notes for him, and to take the title of land for him, by promising to take care of the whole matter, so covers his tracks that the poverty of the pretended owner, which makes it impossible for him to be the real purchaser, is the chief evidence of the trust,[1] and the construction that the notes were themselves a loan to the person for whose benefit they were, in fact, given, is the chief point by which the raising of the trust can be established. Hence appears the practical importance of the cases cited.

Charles E. Grinnell.

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[1] Willis *v.* Willis, 2 Atk. 71 (1740), a leading case.